S.B. CIVIL WRIT PETITION NO.1800/2007
(Rajendra Prasad & Ors. Vs Kanhiyalal & Anr.)

Date of Order ::7th August 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.R.K. Thanvi, for the petitioners.

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Learned counsel for the plaintiff-petitioners argues that the learned trial court has been in error while passing the impugned order dated 20.08.2005 (Annex.3) for provisional determination of rent under Section 13(3) and fixing provisional rent under Section 7 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 only at the rate of Rs.50/- per month on the basis of the assessment list of Municipal Council, Sriganganagar for the year 1993-1994; and has erred in not considering the statements recorded under Order 10 of the Code of Civil Procedure. Learned counsel further argues that the appellate court's impugned judgment dated 24.04.2006 (Annex.5) is no judgment in the eye of law for the appellate court has failed to deal with the contentions on merits. However, having examined the matter in its totality, this Court is of opinion that no interference is called for in this writ petition at this stage.

Though according to the averments in the petition, the petitioner has annexed a copy of amended plaint; but the certified copy so filed as Annexure-1 is that of the original plaint; and the typed copy accompanying Annexure-1 is that of the amended plaint. Learned counsel submits this to be an inadvertent error. Be that as it may, it appears that the suit was filed by the petitioners as back on 16.11.1992 stating the rate of rent at Rs.250/- per month; and by way of amendment of the plaint on 12.08.2002, the plaintiff-petitioners claimed the relief of fixation of standard rent at Rs.1,500/- per month. It further appears that the trial court made provisional determination of rent on 21.07.1998 taking the rent at Rs.250/- per month and disbelieving the assertion of the defendant about the rate of rent at Rs.50/- per month. However, the appellate court set aside the said order dated 21.07.1998 and remanded the matter for decision afresh with reference to the material placed on record and after recording the statements under Order 10 CPC.

The learned trial court has thereafter proceeded to make provisional determination by way of the impugned order dated 20.08.2005 (Annex.3) and while relying on the assessment list of the Municipal Council, Sriganganagar has taken the rate of rent at Rs.50/- per month and has observed that the plaintiffs

have not produced any evidence to find if the rent was more than Rs.50/-per month. However, the learned trial court has noticed such rate of rent to be on the lower side and has, therefore, provisionally fixed the same at Rs.200/- per month for ensuing months and has, accordingly, directed payment of arrears of rent from 01.01.1990 to 31.07.2005 at the rate of Rs. 50/- per month and for payment of rent for subsequent months at the rate of Rs.200/- per month. In the appeal preferred by the plaintiffs, the appellate court has noticed the contentions of both the parties and has found that the order passed by the trial court is based on thorough consideration of the entire material on record and does not suffer from any error.

In the aforesaid facts and circumstances of the case, particularly when the impugned orders relate only to the interim arrangement during the pendency of the suit and finally the rate of rent is to be arrived by the trial court after consideration of the evidence produced by the parties; and looking to the fact that impugned order was passed by the trial court on 20.08.2005 in relation to the suit filed way back in the month of November 1992, this Court is clearly of opinion that the matter does not require consideration in the extra-ordinary writ jurisdiction of this Court at this stage. The matter is to be

finally decided by the trial court and the suit must have registered further progress after passing of the impugned orders. There does not appear any reason to consider interference in this matter relating only to the rate of provisional rent at this stage.

The writ petition is, therefore, rejected.

(DINESH MAHESHWARI),J.

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